



**DEPARTMENT OF THE ARMY
NORFOLK DISTRICT CORPS OF ENGINEERS
FORT NORFOLK 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096**

CENAO-WRR

**REGIONAL PROGRAMATIC GENERAL PERMIT
12-SPGP-01**

Effective Date: May 31, 2012

Expiration Date: May 31, 2017

I. AUTHORITIES: 12-SPGP-01 authorizes the discharge of dredged or fill material in nontidal waters, of the United States, including wetlands, associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Norfolk District (Corps or Norfolk District). These projects must have no more than minimal individual and cumulative impacts and must meet all the terms and conditions outlined herein. The use of 12-SPGP-01 is restricted to those projects that have avoided and minimized impacts to waters of the U.S., including wetlands, to the maximum extent practicable.

The people of the Commonwealth of Virginia (Virginia or “the Commonwealth”) are hereby authorized by the Secretary of the Army and the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the CWA (33 U.S.C. § 1344), to perform the aforementioned work in nontidal waters and wetlands of the Commonwealth as described herein. The Corps’ authority and guidance to develop general permits is contained in 33 U.S.C. § 1344(e) and 33 C.F.R. § 325.2(e)(2), 33 C.F.R. § 325.3(b), and Corps Regulatory Guidance Letter 83-7.

II. PROCEDURES:

A. Delineation Confirmations: Prior to the submission of an application for any Residential, Commercial, or Institutional Development Activity or Linear Transportation Activity covered by 12-SPGP-01, a proponent must first obtain a confirmed delineation of all waters of the U.S., including wetlands, and Virginia state surface waters on the property. The applicant will contact the Corps to obtain a delineation confirmation. A confirmed delineation is not required for Virginia Department of Transportation (VDOT) linear transportation projects (these projects must adhere to separate, but similar, procedures). When appropriate a delineation confirmation may also be required from the Environmental Protection Agency (EPA).

B. Application: Applicants must use the newest version of Joint Permit Applications (JPAs) and submit these applications to the Virginia Marine Resources Commission (VMRC). The applicable Virginia Water Protection (VWP) permit regulations define the information required for a complete VWP permit application (see 9 VAC 25-210-80, 9 VAC 25-660-50, 9 VAC 25-670-50, 9 VAC 25-680-50, and 9 VAC 25-690-50). This information, plus a confirmed

delineation from the Corps with associated map(s) and data sheets, will be required to render an application complete for 12-SPGP-01 purposes. VDOT will submit the Inter-Agency Coordination Meeting JPA or the VDOT Reporting Only Spreadsheet. A joint permit application may be obtained through the following link:

http://www.nao.usace.army.mil/Regulatory_Branch/JPA.asp

C. State Approvals: In order for 12-SPGP-01 to be valid, permittees must obtain the following state approvals prior to commencement of work in waters of the U.S.:

1. Virginia Department of Environmental Quality (VDEQ) VWP permit and
2. VMRC permit, when required

For the purpose of resolving non-compliance and/or enforcement actions the 12-SPGP-01 may be issued or modified in conjunction with a VDEQ informal resolution, letter of agreement, executive compliance agreement or consent order. Authorizations under 12-SPGP-01 also require that permittees ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*), the Virginia Erosion and Sediment Control Regulations (4 VAC 30-50-10 *et seq.*), and the Virginia Stormwater Management Program (VSMP) Permit Regulation (4 VAC 50-60-10 *et seq.*). Authorizations under 12-SPGP-01 do not supersede state or local government authority or responsibilities pursuant to the Act.

D. Definitions:

a. For purposes of 12-SPGP-01, “loss” of waters of the U.S., including wetlands, shall be defined as filling (including placement of pipes or other water conveyances in waters) and other permanent adverse effects, including mechanized landclearing, permanent conversion, excavation (including channelization), flooding, draining, etc. The acreage/linear footage of loss of waters of the U.S. is the threshold measurement of the impact to existing waters, including wetlands, for determining whether a project may qualify for 12-SPGP-01; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values.

b. For purposes of 12-SPGP-01, “natural stream design” means that the channel should mimic the dimension, pattern, and profile of a representative reference stream reach.

c. For purposes of 12-SPGP-01, VDEQ is the state agency responsible for ensuring permit applications meet the informational and technical requirements of the 12-SPGP-01 and for issuance of 12-SPGP-01 authorizations for qualifying Residential, Commercial, Institutional and Linear Transportation projects.

d. For purposes of 12-SPGP-01, the “permittee” will be the responsible party in receipt of the 12-SPGP-01 authorization from the VDEQ. The permittee will be the responsible party for complying with all 12-SPGP-01 general conditions as well as any additional special conditions required of each project.

e. For purposes of 12-SPGP-01, “lateral encroachment” is when a road, utility or other project encroaches into waters of the U.S., including wetlands, but does not cross the resource perpendicularly or diagonally.

III. AUTHORIZED ACTIVITIES

A. Residential, Commercial, and Institutional Development Activities:

a. Eligibility Criteria:

- i. Activities are subject to Corps jurisdiction;
- ii. Activity involves the discharge of dredged or fill material associated with residential, commercial, and institutional projects causing the permanent loss of not more than one acre of nontidal wetlands or open waters or the permanent loss of not more than 2,000 linear feet of stream channel, unless otherwise excluded by 12-SPGP-01;
- iii. Activity meets the general conditions of 12-SPGP-01 listed on pages 7-14 and any special conditions required of each project-specific authorization;
- iv. Compensatory mitigation is provided in accordance with the mitigation standards and general conditions on pages 10 -11; and
- v. Discharges associated with residential, commercial, and institutional development activities include those outlined in the VDEQ’s General Permits (see 9 VAC 25-660 *et seq.*, 9 VAC 25-670 *et seq.*, 9 VAC 25-680 *et seq.*, and 9 VAC 25-690 *et seq.*) and are associated with the construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include multiple and single unit developments. Commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For residential, commercial, and institutional developments, the aggregate permanent loss of waters of the U.S. cannot exceed one acre of nontidal wetlands or open water; or 2,000 linear feet of stream.
- vi. Residential, commercial, or institutional developments are consistent with the Corps’ subdivision guidance dated March 15, 1993 and June 2, 1999, the Corps’ and VDEQs’ joint subdivision guidance dated June, 2007 and/or any subsequent guidance that supersedes or supplements those documents.

b. Federal Screening Procedures:

i. All residential, commercial, and institutional development activities that will cause or result in impacts to tidal waters, including wetlands, and/or permanent impacts that exceed ½ acre of non-tidal wetlands or open waters and/or exceed 300 linear feet of stream channel will be coordinated with the Corps, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS) for federal review.

ii. If EPA or FWS determines that there are project-specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or concerns regarding the amount and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District Commander may exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

iii. Any Corps' concerns shall be relayed to the VDEQ and addressed during the VDEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, possibly as an individual permit.

B. Linear Transportation Activities:

a. Eligibility Criteria:

i. Activities are subject to Corps jurisdiction;

ii. Activities involve the discharge of dredged or fill material associated with the construction, expansion, modification, or improvement of linear transportation projects not causing the permanent loss of more than 1/3 acre of waters of the U.S., including wetlands, at any single impact site with independent utility, unless otherwise excluded by 12-SPGP-01;

iii. Activity meets all general conditions of 12-SPGP-01 listed on pages 7-14 and any special conditions required of each project-specific authorization;

iv. Compensatory mitigation is provided for all unavoidable impacts to wetlands;

v. Compensatory mitigation is provided for all unavoidable stream impacts where total permanent impacts exceed 300 linear feet of stream channel (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 10-11. Stream relocation using natural stream design may be considered self-mitigating, as determined on a case-by-case basis;

vi. Lateral encroachments may be authorized by the 12-SPGP-01 if the project meets the following criteria:

1. Impacts due to all project lateral encroachments, including stream relocations, do not exceed 1/3 acre of waters of the United States or 2,000 linear feet of stream channel;

2. Total project lateral encroachments do not cause the permanent loss of more than 300 linear feet of stream channel due to the installation of piping, riprap, concrete, etc;

3. All project lateral encroachments exceeding 300 linear feet of stream channel are performed using natural stream design (unless waived in writing); and

4. Impacts due to lateral encroachment(s), new alignment projects and/or projects that impact the same aquatic resources multiple times will be considered cumulative for the entire project regardless of whether segments of that project may have independent utility;

vii. Discharges associated with linear transportation projects include the construction, expansion, modification, or improvement of highways, roads, railways, trails, and airport runways and taxiways. Construction and/or relocation of utility lines within the right-of-way/easements of the project and performed in direct relation with the project are covered under this activity, with impacts counting toward permit thresholds.

b. Federal Screening Procedures:

i. All linear transportation activities involving permanent impacts that exceed 300 linear feet of stream channel at any single impact area OR containing multiple single and complete impact areas on the same project that additively exceed 1/3 acre of impact to waters of the United States, including wetlands and/or exceed 300 linear feet of stream channel (lateral or crossing impact) will be reviewed by the Corps, the EPA, and the FWS.

ii. If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or the amount and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District Commander may exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

iii. Any Corps' concerns shall be relayed to the VDEQ and addressed during the VDEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process.

c. VDOT Reporting-Only Procedures: VDOT may report by spreadsheet on a monthly basis to the VDEQ those VDOT projects meeting the following eligibility criteria:

i. Permanent impacts do not exceed 1/10 acre of waters of the United States, including wetlands; the definition of independent utility must be applied when determining permanent impact totals;

ii. Section 7 – Endangered Species Act Review has been completed, includes FWS concurrence with findings, if needed;

iii. Section 106 finding of “No Effect” has been reviewed and approved by the VDEQ-Cultural Resource Specialist; and

iv. For projects with cumulative impacts exceeding 300 linear feet of stream channel, a pre-coordination email will be sent to the Corps with a project description, impacts, topographic quadrangle and photos. The VDEQ and VDOT Central Office will be copied on the email. If the Corps **concurs** that project can be included on the spreadsheet, VDOT will include the Corps concurrence email with the spreadsheet submittal. No additional Norfolk District review will be required. If the Corps **does not concur** that project can be included on the spreadsheet, VDOT will submit a JPA through its interagency coordination meeting and will include the Corps' response email in the application.

C. Exclusions from Coverage: The following activities and resources areas are excluded from coverage by 12-SPGP-01 and require different types of Corps permits:

a. Conversion of waters and/or wetlands for agricultural production and agriculture-related activities (crop fields or pasture); farm buildings; grain storage facilities; grassed waterways; low water crossings; impoundments for irrigation, livestock watering, and fire prevention purposes; animal feeding operations; waste storage facilities; and farm access roads;

b. Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*) (Percentages may be based on stem counts, basal area, or percent aerial cover);

c. Wetland areas underlain by histosols (Histosols are organic soils that are often called mucks, peats, or mucky peats. The list of histosols includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock;

d. Placement of septic tanks (does not include alternate onsite sewer systems);

e. Residential gardening, lawn maintenance and landscaping;

f. Construction of extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with the current Virginia Department of Conservation and Recreation (DCR) standards for such facilities or local standards that, at a minimum meet the DCR standards, unless the following requirements are met:

i. The area within the entire basin and back-flooding limits are considered as permanent impacts. For the purposes of the 12-SPGP-01, back-flooding limits are defined as

back-flooding that will not be released within 24 hours if the activity is east of I-95, or back-flooding that will not be released within 48 hours if the activity is west of I-95.

ii. The proposed basins are attendant features associated with a “single and complete” residential, commercial, institutional or linear transportation project;

g. Construction or maintenance of farm or stock ponds that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§10.1-604 *et seq.*) of Chapter 6 pursuant to normal agricultural or silvicultural activities; and

h. Discharges of dredged or fill material associated with residential, commercial, and institutional activities causing the permanent loss of more than one acre of nontidal wetlands or open waters or waters or over 2,000 linear feet of stream channel.

IV. GENERAL CONDITIONS: The following conditions apply to all activities authorized under 12-SPGP-01. Work that does not meet one or more of the terms and general conditions of 12-SPGP-01, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit.

1. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.

2. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Corps.

3. **Discretionary authority.** The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.

4. **Single and complete projects.** 12-SPGP-01 shall only be applied to single and complete projects. For purposes of 12-SPGP-01, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership and which has independent utility. For linear transportation projects with multiple crossings or encroachments a determination of “single and complete” will typically apply to each crossing of waters that occurs (i.e., single waterbody and/or wetlands) at separate and distinct locations and with independent utility. However, in cases where there are many crossings in close proximity, numerous crossings of the same waterbody, multiple crossings, or multiple encroachments that otherwise may have more than minimal individual or cumulative impacts; the Corps has the discretion to consider all the crossings cumulatively as one single and complete project.

5. **Independent utility.** A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as a separate, single and complete project with independent utility. For a linear transportation project,

separate impact areas on a new location roadway are not considered to have independent utility thus impacts would be considered cumulatively and eligible for a single 12-SPGP-01 authorization. However, separate impact areas on a roadway that is being widened or where pipes are being replaced at multiple crossings are considered to have independent utility, and each crossing would be considered eligible for a separate 12-SPGP-01 authorization (impacts are not considered cumulatively for permitting, but are considered cumulatively when assessing the need for federal review).

6. Multiple general permit authorizations. The 12-SPGP-01 may be combined with other Corps general permits (including Nationwide, Regional or Letters of Permission) as long as the impacts are considered cumulatively and do not exceed the acreage limit or linear foot limits of the 12-SPGP-01. Two separate activities (e.g., Activity A and B), within 12-SPGP-01, may be combined as long as they do not exceed the acreage or linear footage threshold of the activity with the highest specified acreage or linear footage threshold.

7. Permit on-site. The permittee shall ensure that a copy of 12-SPGP-01 and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 12-SPGP-01 authorization.

General Conditions Related to other federal laws or programs:

8. Historic Properties. Any activity authorized shall comply with Section 106 of the National Historic Preservation Act. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Corps and the VDEQ of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

9. Tribal Rights. No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights, treaty fishing and hunting rights.

10. Federal Lands. Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.

11. Endangered Species. No activity is authorized under this 12-SPGP-01 which may affect a proposed/listed threatened or endangered species or proposed/listed critical habitat (as identified under the Federal Endangered Species Act (ESA)), is likely to jeopardize the continued existence of such species or which will destroy or adversely modify the critical habitat of such species unless Section 7 consultation addressing the effects of the proposed activity has been completed.

a. Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the VDEQ and Corps with the appropriate documentation to demonstrate compliance with those requirements.

b. Non-federal permittees shall notify the VDEQ and Corps if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the VDEQ or Corps that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the USFWS at:

http://www.fws.gov/northeast/virginiafield/endspecies/Project_Reviews.html and/or NOAA Fisheries Habitat Conservation Division, P.O. Box 1346, 7580 Spencer Road, Gloucester Point, VA 23062.

c. Section 7 coordination will be performed in accordance with the NAO ESA Review Process. The applicant may not begin work until the VDEQ or Corps has notified them that the Section 7 consultation has been completed.

d. As a result of formal or informal consultation with the FWS or NOAA Fisheries the Corps District Commander may add species-specific regional endangered species conditions to the 12-SPGP-01.

e. Authorization of an activity by 12-SPGP-01 does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NOAA Fisheries, both lethal and non-lethal “takes” of protected species are in violation of the ESA.

12. Bald and Golden Eagle Protection Act. The bald eagle (*Haliaeetus leucocephalus*) is no longer a federally listed threatened or endangered species; therefore, the Endangered Species Act provisions are not applicable to this species. The Bald and Golden Eagle Protection Act (BGEPA) does not require that a federal agency involved in permitting the proposed action conduct coordination. The coordination under the BGEPA is the responsibility of the applicant. The applicant should either obtain a FWS bald eagle take permit or a letter of concurrence from FWS indicating that a permit is not necessary prior to initiating construction activities. You should contact FWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, ATTN: Kim Smith, 6669 Short Lane, Gloucester, VA 23061. Information on active bald eagle nests in the project area can be obtained via The Center for Conservation Biology (CCB) Virginia Eagles Nest Locator: <http://www.ccb-wm.org/virginiaeagles/index.htm>.

13. Wild and Scenic Rivers. Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency

with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

14. Department of Defense (DOD) Siting Clearinghouse Coordination. For all commercial and institutional development projects that include the construction of wind energy generating structures, solar towers, or overhead powerlines the VDEQ must coordinate the project with the DOD Clearinghouse. The VDEQ will send a copy of the joint permit application and SPGP authorization to the following address: Department of Defense Clearinghouse, Attn: Mr. Marshal Williams and Mr. Davis Blalock, 101 Marietta St., NW, Suite 3120, Atlanta, Georgia 30303 or via email to: Frederick.m.williams28.civ@mail.mil and David.c.blalock2.civ@mail.mil.

15. Federal navigation projects. Authorized activities may not interfere with any existing or proposed Federal navigation projects.

16. Navigation. (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

17. Floodplains. All practicable efforts shall be made to conduct the work authorized by 12-SPGP-01 in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.

18. Real estate. Activities authorized under 12-SPGP-01 do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.

19. Environmental justice. Activities authorized under 12-SPGP-01 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

20. Federal liability. In issuing 12-SPGP-01, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or

unpermitted activities or structures caused by the activity authorized by 12-SPGP-01; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

General Conditions Related to Minimizing Environmental Impacts:

21. Avoidance and minimization. Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.(40 CFR 230.10(a) Section 404 (b)(1) Guidelines).

22. Mitigation standards.

a. Wetland mitigation will generally be required for all residential, commercial, and institutional development projects where the total permanent impacts exceed 1/10 acre **AND** for all impacts on linear transportation projects. Generally, the minimum required wetland mitigation ratios will be as follows: 2:1 for forested wetlands, 1.5:1 for scrub-shrub wetlands, 1:1 for herbaceous emergent wetlands, and 1:1 for conversion of forested wetlands to herbaceous emergent wetlands. Mitigation for open waters impacts will be determined by the project manager on a case-by-case basis. All wetland mitigation will comply with the Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332/40 CFR 230).

b. Stream mitigation will generally be required for all residential, commercial, institutional developments **AND** linear transportation projects where the total permanent stream channel impacts exceed 300 linear feet. Minimum stream mitigation requirements will be determined using the current Corps and the VDEQ endorsed assessment methodology. All stream mitigation will comply with Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332; 40 CFR 230).

c. For the purposes of the 12-SPGP-01, definitions for enhancement, establishment (creation), preservation, and re-establishment will be consistent with the definitions listed in the Corps-EPA Compensatory Mitigation for Losses of Aquatic Resources dated April 10, 2008 (33 CFR 325 and 332; 40 CFR 230).

d. Where local zoning ordinances provide for riparian and floodplain protection pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations(9 VAC 1-20 *et seq.*), the use of buffers as a form of compensatory mitigation shall be allowed only (a) where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act and the regulations or (b) where the quality of the existing protected buffer *area* is enhanced to provide greater water quality protection benefits.

23. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

24. Temporary fills. All temporarily disturbed waters and wetlands must be restored to their pre-construction contours within 6 months of commencing the temporary impact's construction. Impacts that will not be restored within 6 months (calculated from the start of the temporary impacts construction) will be considered permanent unless otherwise approved by the 12-SPGP-01. Once restored to their natural contours, soil in these areas must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.

25. Sedimentation and erosion control. Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.

26. Aquatic life movements. Following consultation with the Virginia Department of Game and Inland Fisheries (DGIF), the Norfolk District has determined that fish and other aquatic organisms are most likely present in any stream being crossed, in the absence of site-specific evidence to the contrary. Although prospective permittees have the option of providing such evidence, extensive efforts to collect such information is not encouraged, since countersinking will in most cases be required with some exceptions as outlined below:

a. Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.

b. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Norfolk District on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

c. Extensions and certain maintenance: The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance to pipes/culverts that does not involve replacing the pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.).

d. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).

e. Pipes on bedrock or above existing utility lines: Different procedures will be followed for pipes or culverts to be placed on bedrock or above existing buried utility lines where it is not

practicable to relocate the lines, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:

i. Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations. That documentation will be available to the Norfolk District upon request, but notification or coordination with the Norfolk District is not otherwise required.

ii. Replacement in a new location: If the prospective permittee determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, he/she should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the prospective permittee determines that neither a bottomless structure nor an alternative location is practicable, then he/she must submit a pre-construction notification (PCN) to the Norfolk District in accordance with General Condition 31 of the NWPs. In addition to the information required by General Condition 31, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The PCN must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact his/her regional fishery biologist for the Virginia Department of Game and Inland Fisheries (VDGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from VDGIF, the prospective permittee should provide the VDGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from VDGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

f. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the prospective permittee not want to countersink the pipe/culvert for other reasons, he/she must submit a Pre-Construction Notification to the Norfolk District in accordance with General Condition 31 of the Nationwide Permits. In addition to the information required by General

Condition 31, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The prospective permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals. The prospective permittee may find it helpful to contact his/her regional fishery biologist for the Virginia Department of Game and Inland Fisheries (DGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from DGIF, the prospective permittee should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN.

g. Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, then the permittee must stop work and contact the Norfolk District (contact by telephone and/or email is acceptable). The permittee must provide the Norfolk District with specific information concerning site conditions and limitations on countersinking. The Norfolk District will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Norfolk District could determine that the work will not qualify for a nationwide permit.

h. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the guidance above. In other words, the replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.

27. Discharge of pollutants. All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.

28. Obstruction of high flows. Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.

29. Waterbird breeding areas. Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

30. Native trout and anadromous fishes. Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF.

31. Water supply intakes. No discharge of dredged or fill material may occur in proximity of a public water supply intake.

32. Invasive Species. Plant species on the most current *Virginia Department of Conservation and Recreation's Invasive Alien Plant List* shall not be used for replanting activities authorized by the SPGP. The list of invasive plants in Virginia may be found at: http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf.

General Procedural Conditions:

33. Inspections. The permittee understands and agrees that the Corps and/or the VDEQ are permitted and allowed to make periodic inspections at any time the Corps or VDEQ deems necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under 12-SPGP-01, as deemed necessary on a case-by-case basis.

34. Maintenance. The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.

35. Property rights. 12-SPGP-01 does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.

36. Modification, suspension, and revocation. 12-SPGP-01 and individual verifications under 12-SPGP-01 may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.

37. Restoration directive. The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.

38. Special conditions. The Corps may impose other special conditions on a project authorized pursuant to 12-SPGP-01 that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.

39. False or incomplete information. In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps or the VDEQ that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the Corps may suspend or revoke authorization, in whole or in part, and/or the United States or Corps may institute appropriate legal proceedings.

40. Abandonment. If the permittee decides to abandon the activity authorized under 12-SPGP-01, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.

41. Transfer of authorization. In order to transfer authorization under 12-SPGP-01, the transferee and permittee must supply the Corps and the VDEQ with a written and signed, by all appropriate parties, request to make such a transfer. Such transfer is not effective until written approval has been granted by the Corps or the VDEQ.

42. Binding effect. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

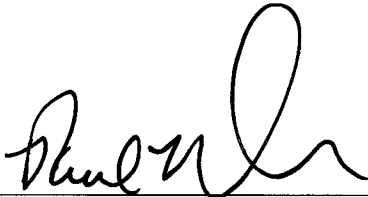
General Conditions Regarding Duration of Authorizations:

43. Duration of authorization. Activities authorized under 12-SPGP-01 must be completed by May 31, 2017.

44. Time extensions. If a permittee is unable to complete the work authorized under 12-SPGP-01 in the time limit provided in the initial authorization, he/she must submit a request for a time extension to the Corps and the VDEQ for consideration at least one month prior to the expiration of the permit authorization.

45. Expiration of 12-SPGP-01. Unless further modified, suspended, or revoked, 12-SPGP-01 will be in effect until May 31, 2017. Upon expiration, it may be considered for revalidation. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 12-SPGP-01 will remain authorized provided the activity is completed within twelve months of the date of this 12-SPGP-01's expiration of May 31, 2017, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e).

5/31/12
Date



PAUL B. OLSEN, P.E.
Colonel, Corps of Engineers
Commanding